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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Ethiopia (on behalf of the Group of African States): draft resolution

25/... The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation

The Human Rights Council,

Reaffirming the purposes and principles of the Charter of the United Nations,

Guided by the Universal Declaration of Human Rights, the Declaration on the Right to Development, the Vienna Declaration and Programme of Action and other relevant human rights instruments,

Recalling General Assembly resolutions 60/251 of 15 March 2006, 62/219 of 22 December 2007 and 65/281 of 17 June 2011, and Human Rights Council resolutions 5/1 and 5/2 of 18 June 2007, 11/11 of 18 June 2009 and 16/21 of 25 March 2011,

Recalling also General Assembly resolutions 54/205 of 22 December 1999, 55/61 of 4 December 2000, 55/188 of 20 December 2000, 56/186 of 21 December 2001, 57/244 of 20 December 2002, 58/205 of 23 December 2003, 59/242 of 22 December 2004, 60/1 of 16 September 2005, 60/207 of 22 December 2005, 61/209 of 20 December 2006, 62/202 of 19 December 2007, 63/226 of 19 December 2008, 64/237 of 24 December 2009, 65/1 of 22 September 2010, 65/169 of 20 December 2010, 67/192 of 20 December 2012 and 68/195 of 18 December 2013,

Recalling further Human Rights Council resolutions 17/23 of 17 June 2011, 19/38 of 23 March 2012 and 22/12 of 21 March 2013,

Reiterating the commitment to ensure the effective enjoyment of all civil, political, economic, social and cultural rights for everyone, including the right to development, and the obligation of all States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms,

Reaffirming that all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law, and that in no case may a people be deprived of its own means of subsistence,

Recognizing that corruption is a serious barrier to effective resource mobilization and allocation and diverts resources away from activities that are vital for poverty eradication, the fight against hunger, and economic and sustainable development,

Alarmed at cases in which the proceeds of corruption-related crimes that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, the deprivation of which threatens the political stability and sustainable development of those States and has a negative impact on the application by States of the maximum available resources to the full realization of all human rights for all,

Deeply concerned that the enjoyment of human rights, be they economic, social and cultural, or civil and political, in particular the right to development, is seriously undermined by corruption and the transfer of funds of illicit origin, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development, especially when an inadequate national and international response leads to impunity,

Recalling the United Nations Convention against Corruption, underlining its central role in fostering international cooperation to facilitate the repatriation of the proceeds of corruption-related crimes, and stressing the need for universal adherence to the Convention and for its full implementation, as well as the full implementation of the resolutions and decisions of the Conference of the States Parties to the Convention, particularly those adopted at its fourth and fifth sessions,

Recalling also that the United Nations Convention against Corruption underlines that States parties should not decline to render mutual legal assistance, pursuant to the Convention, including on the ground of bank secrecy,

Taking note of the work carried out by different United Nations bodies, including the United Nations Office on Drugs and Crime, as well as international and regional organizations, in preventing and combating all forms of corruption,

Recognizing that supportive domestic legal systems are essential in preventing and combating corrupt practices and the transfer of assets of illicit origin and in returning such assets, and recalling that the fight against all forms of corruption requires strong institutions at all levels, including at the local level, able to take efficient preventive and law enforcement measures consistent with the United Nations Convention against Corruption, in particular chapters II and III thereof,

Appreciating the continued efforts of the Conference of the States Parties to the United Nations Convention against Corruption, through its various intergovernmental working groups, to oversee the review process of the implementation of the Convention, to advise on the provision of technical assistance for building institutional and human capacity in States parties for the prevention of corruption, and to enhance international cooperation, including in the repatriation of funds of illicit origin,

Affirming the responsibilities of requesting and requested States in the repatriation of funds of illicit origin, cognizant that countries of origin must seek repatriation as part of their duty to ensure the application of the maximum available resources to the full realization of all human rights for all, including the right to development, address human rights violations and combat impunity, and that recipient countries, on the other hand, have a duty to assist and facilitate repatriation, including through judicial assistance, as part of their obligation of international cooperation and assistance under chapters IV and V of the

United Nations Convention against Corruption and in the field of human rights, and as enshrined in article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and article 3, paragraph 3, of the Declaration on the Right to Development,

Affirming also the commitment made at the 2005 World Summit and the 2010 High-level Plenary Meeting of the General Assembly on the Millennium Development Goals to make the fight against corruption a priority at all levels and to curb the illicit transfer of funds,

Concerned at the difficulties, in particular the practical difficulties, that both requested and requesting States face in the repatriation of funds of illicit origin, taking into account the particular importance of the recovery of stolen assets for sustainable development and stability, and noting the difficulties of providing information establishing a link between the proceeds of corruption in the requested State and the crime committed in the requesting State, which in many cases may be difficult to prove, bearing in mind that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law,

Acknowledging the progress made towards the implementation of the United Nations Convention against Corruption, while recognizing that States continue to face challenges in recovering funds of illicit origin owing to, inter alia, differences in legal systems, the complexity of multijurisdictional investigations and prosecutions, lack of familiarity with the mutual legal assistance procedures of other States and difficulties in identifying the flow of funds of illicit origin, and noting the particular challenges in recovering them in cases involving individuals who are or have been entrusted with prominent public functions and their family members and close associates, and recognizing also that legal difficulties are often exacerbated by factual and institutional obstacles,

Noting with serious concern that, as highlighted in the interim report by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights,[1] despite the scarcity of available public data, most illicit financial outflows are from developing countries and that, despite increased efforts by the international community to curb the flow of illicit funds, recent studies indicate that such flows grew in real terms by an annual average of 8.6 per cent, exceeding the average rate of economic growth in developing countries, over the period 2001 to 2010, and it is estimated that developing countries lost between 783 billion and 1,138 billion United States dollars in illicit financial outflows in 2010, while, as indicated in the comprehensive study prepared by the United Nations High Commissioner for Human Rights on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, in particular economic, social and cultural rights,[2] only about 2 per cent of the estimated funds of illicit origin annually leaving the developing world are repatriated to their countries of origin,

Noting also with serious concern that, as highlighted by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights in his final report,[3] while official development assistance remains an important source of finance for poverty alleviation and development, the substantial amounts lost to illicit financial flows — estimated at 946.7 billion dollars in 2011 — could help the efforts of developing countries to mobilize domestic resources for poverty alleviation, development

[1] A/HRC/22/42 and Corr.1.
[2] A/HRC/19/42 and Corr.1.
[3] A/HRC/25/52.

and realization of human rights, and to reduce their dependence on external financing, which can lead to the erosion of ownership of national development agendas,

Noting the particular concern of developing countries and countries with economies in transition regarding the return of assets of illicit origin derived from corruption, in particular to countries from which they originated, consistent with the principles of the United Nations Convention against Corruption, in particular chapter V thereto, so as to enable countries to design and fund development projects in accordance with their national priorities in view of the importance that such assets can have to their sustainable development,

Convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law, and stressing that any resource that the State is deprived of because of corruption has potentially the same negative effect, regardless of whether it is exported or domestically retained,

1. *Takes note* with appreciation of the comprehensive study prepared by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights;[3]

2. *Calls upon* all States that have not yet acceded to the United Nations Convention against Corruption to consider doing so as a matter of priority;

3. *Calls upon* States to consider enacting legislation to address offences by business enterprises, including multinational corporations, such as tax evasion and avoidance, which deprive Governments of legitimate domestic sources of revenue for the implementation of their development agendas;

4. *Asserts* the urgent need to repatriate illicit funds to the countries of origin without conditionalities, in accordance with the United Nations Convention against Corruption and in line with the commitments made at the 2005 World Summit and the 2010 High-level Plenary Meeting of the General Assembly on the Millennium Development Goals to make the fight against corruption a priority at all levels and to curb the illicit transfer of funds, and urges all States to step up their efforts to trace, freeze and recover those funds;

5. *Acknowledges* the importance of compliance with international human rights law in relation to the repatriation of funds of illicit origin by, inter alia, promoting human rights-based policy coherence in the deliberations and actions by States Members of the Human Rights Council and in the intergovernmental process of implementing the United Nations Convention against Corruption;

6. *Invites* the Conference of the States Parties to the United Nations Convention against Corruption to consider ways of adopting a human rights-based approach in the implementation of the Convention, including when dealing with the repatriation of funds of illicit origin, and appreciates the continued efforts of the Open-ended Intergovernmental Working Group on Asset Recovery of the Conference to assist States parties in fulfilling their obligations under the Convention to prevent, detect and deter in a more effective manner the international transfer of funds of illicit origin and to strengthen international cooperation in asset recovery, bearing in mind that, regardless of the capacities, resources and willingness of the requesting State's institutions and authorities, there is a victim society that is suffering the consequences of the transfer of those funds;

7. *Welcomes* the decision made at the fifth session of the Conference of the States Parties to the United Nations Convention against Corruption to renew the mandate of open-ended intergovernmental expert meetings on international cooperation to advise and assist States with regard to extradition and mutual legal assistance, and notes with

appreciation the Stolen Assets Recovery Initiative of the World Bank Group and the United Nations Office on Drugs and Crime, and encourages coordination among existing initiatives;

8. *Urges* States to consider establishing an intergovernmental working group on the negative impact of illicit financial flows on the enjoyment of human rights, to further explore policy responses to the phenomenon, to coordinate the efforts of the various organizations involved in addressing different forms of illicit financial flows, and to consider the possibility of elaborating a comprehensive international treaty on issues relating to human rights and illicit financial flows, including on tax evasion, profit shifting by multinational companies and limiting the ability of secrecy jurisdictions to facilitate illicit financial flows;

9. *Realizes* that, while illicit financial outflows from the least developed countries may account for only a small portion of all outflows of funds of illicit origin worldwide, they have a particularly negative impact on social development and the realization of social, economic and cultural rights in these countries, given the size of their economies, and expresses deep concern that such outflows, as estimated by the United Nations Development Programme, exceed the total official development assistance received by many of the least developed countries and, in some cases, surpass their debt service payments;

10. *Underscores* that the repatriation of funds of illicit origin would provide States that have undergone regime change with a further opportunity to improve the realization of economic, social and cultural rights and to fulfil their obligation to meet the legitimate aspirations of their peoples;

11. *Acknowledges* the important role that civil society can play in exposing corruption and drawing attention to the negative impact of the non-repatriation of funds of illicit origin on the rule of law and the realization of economic, social and cultural rights, and reiterates in this context the obligation of States to protect reporting persons in accordance with article 33 of the United Nations Convention against Corruption and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;

12. *Welcomes* recent national initiatives to adopt anti-money-laundering legislation as an important step in the fight against corruption and the willingness demonstrated by some States to cooperate in facilitating the repatriation of funds of illicit origin, and calls for more robust regulations in this regard, including through the implementation of policies aimed at reducing the flow of funds of illicit origin, ensuring their repatriation and the provision of technical assistance to developing countries;

13. *Calls for further* international cooperation through, inter alia, the United Nations system, in support of national, subregional and regional efforts to prevent and combat corrupt practices and the transfer of assets of illicit origin, in accordance with the principles of the United Nations Convention against Corruption and, in this regard, encourages close cooperation at the national and international levels between anti-corruption agencies, law enforcement agencies and financial intelligence units;

14. *Calls upon* all States requested to repatriate funds of illicit origin to fully uphold their commitment to make the fight against corruption a priority at all levels and to curb the illicit transfer of funds and to acknowledge that, in fulfilling their obligations in this regard under the United Nations Convention against Corruption, they also have a responsibility towards societies affected by corruption to make every effort to achieve the repatriation of funds of illicit origin to the countries of origin in order to diminish the negative impact of non-repatriation, including on the enjoyment of human rights, in particular economic, social and cultural rights in the countries of origin by, inter alia,

lowering the barriers imposed on requiring jurisdictions at the tracing stage and enhancing cooperation in this regard between anti-corruption agencies, law enforcement agencies and financial intelligence units, in particular taking into account the risks of dissipation of those funds and, where appropriate, by delinking confiscation measures from a requirement of conviction in the country of origin;

15. *Calls upon* all States requesting the repatriation of funds of illicit origin to uphold fully their commitment to make the fight against corruption a priority at all levels and to curb the illicit transfer of funds, and to apply the principles of accountability, transparency and participation in the decision-making process regarding the allocation of repatriated funds to the realization of economic, social and cultural rights in order to improve prevention and detection procedures, correct identified weaknesses or mismanagement, prevent impunity, provide effective remedies directed at creating conditions for avoiding new human rights violations and improve the overall administration of justice;

16. *Reaffirms* that it is the obligation of the State to investigate and prosecute corruption, calls upon all States to strengthen criminal proceedings directed at freezing or restraining funds of illicit origin, and encourages requesting States to ensure that adequate national investigative procedures have been initiated and substantiated for the purpose of presenting mutual legal assistance requests and, in this context, encourages requested States to provide information on legal frameworks and procedures to the requesting State;

17. *Underlines* that there is also a corporate responsibility to comply with and respect all applicable laws and human rights, and a need for greater access to effective remedies by victims in order to realize effective prevention of, and remedy for, business-related human rights harm, as set out in the Guiding Principles on Business and Human Rights;[4]

18. *Stresses* the need for transparency in financial institutions and effective due diligence measures to be applied by financial intermediaries, calls upon States to seek appropriate means in accordance with their international obligations to ensure the cooperation and responsiveness of financial institutions to foreign requests to freeze and recover funds of illicit origin and the provision of an efficient mutual legal assistance regime to States requesting repatriation of those funds, and encourages the promotion of human and institutional capacity-building in that regard;

19. *Requests* the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, to continue to consider the impact of illicit financial flows on the enjoyment of human rights as part of the mandate;

20. *Also requests* the Independent Expert to undertake a further study to analyse the negative impact of illicit financial flows on the enjoyment of human rights in the context of the post-2015 development agenda, and to present the study to the Human Rights Council at its twenty-eighth session;

21. *Requests* the High Commissioner for Human Rights to provide all necessary facilities and assistance to allow the Independent Expert to carry out the mandate set out in the present resolution, including by holding consultations, and calls upon all relevant stakeholders, including States and United Nations bodies and agencies, as well as other international and regional entities, to cooperate fully with the Independent Expert in this regard;

[4] A/HRC/17/31, annex.

22. *Requests* the Secretary-General to bring the present resolution to the attention of all Member States and different forums dealing with the issue of the repatriation of funds of illicit origin within the United Nations system for consideration and necessary action and coordination as appropriate, particularly within the context of the Conference of the States Parties to the United Nations Convention against Corruption;

23. *Decides* to continue its consideration of this matter under the same agenda item.